

Testimony by
E. Raymond O'Malley
Before
The
Tax Policy Committee
Michigan House of Representatives
May 22, 2013

A Taxpayer's Nightmare

The Principal Residence Exemption (PRE) Appeal Process

Greetings to the Tax Policy Committee, my name is Ray O'Malley and it is my privilege and honor to be able to submit testimony with regard to HB 4406 as introduced by Representative Brandon Dillon.

Some time ago, I alerted Representative Dillon about a problem one of his constituents was encountering. That person was my brother, Thomas O'Malley and it involved a property tax problem related to the home he owned at 832 Eleanor St in Grand Rapids. The state Department of Treasury had denied and withdrawn his principal residence exemption and levied a deficiency assessment against the property. The subsequent appeal process of the PRE denial is the genesis for my seeking some legislative remedy for a system that we found riddled with abuse.

I have been an attorney for more than forty years. I have, as an Assistant Attorney General, represented the Michigan Department of Treasury for eight years. I was a chief of staff and committee counsel in the U.S. House of Representatives for twelve years. I understand taxes, legislation and an appeals process. Never in my forty plus years of practice have I had a worse legal experience.

This is a complicated legal and factual situation which the taxpayer did not have the opportunity to air fully in his appeal. I will not do that in this testimony but rather I will just address the appeals process and its fallout.

The first thing is the interest and also the penalties as applied to a tax deficiency. Mr. O'Malley's deficiency was for the year 2010 for an amount of around \$700.00. According to the legislation, if this deficiency is levied the state may go back and also levy the deficiency for the previous three years. Suddenly, we are up around, \$2800. Next the interest and fees are applied. But the interest continues to be applied per month while the appeal is going on. We were ready to proceed to hearing within 30 days of denial which was in December of 2010. We were never able to have the opportunity to communicate with a PRE official until December 2011 at a telephonic hearing.

In the interim, Mr. O'Malley continually received statements from the county and city treasurers that he was delinquent in his taxes for 2007-2010. The Kent County notice was titled "pre-forfeiture status." All of this while a legal appeal was pending. The most stunning blow came in February of 2012-it was a notice of pending forfeiture of property for unpaid real property taxes. I called the county treasurer and they said, "Just ignore it; we usually catch these before it happens." My brother decided to pay the deficiency and continue the appeal.

He was coerced into this and I knew then he could not win his case. He had the law on his side, but they already had the money.

In the meantime, from late 2010 on, Treasury failed to respond to any of my letters and phone calls. I asked how this deficiency could be remedied-no response. I also asked for information such as a copy of the PRE affidavit-never a response from the PRE Unit.

In my experience with my representation of the Department of Treasury I had handled hundreds of appeals before the State Board of Tax Appeals. In that venue the statute would make available a Treasury official to present the prima facie case and then the tax payer could cross examine the official and then present his evidence to rebut or refute the Treasury case.

This was not the scenario at the informal hearing or at the Tax Tribunal. I mentioned the telephonic hearing earlier. It was an appalling experience. I had, early in the process, asked for and in-person hearing. It was denied. But finally, at the phone hearing I had access to the head of the PRE Unit (Mr. Mida) along with the hearing referee (Ms. Martell). I asked if I could record the hearing, that was denied. I started to ask questions of Mr. Mida, for answers that I had sought in letters and phone calls. He said he did not have to answer any questions. This was confirmed by Ms. Martell in a brusque and hectoring manner. She said, "Make your case." I had to prove how the Treasury was wrong when I did not know how they had made their case because they refused to answer my questions. No prima facie case was offered that day. In the old days we gave drug dealers a more fair hearing than that.

The Tax Tribunal experience was no better other than the referee was more professional and tried to be fair.

The final takeaway for this case in 2013 is that the taxpayer is out of close to \$5,000 on a property with an SEV of \$37,000 and we still do not have any answers for the following questions:

1. If in fact, the initial reason for the denial of exemption was because Mr. O'Malley's driver's license and voter's registration were not at 832 Eleanor; would this defect be cured and exemption be restored if he changed his license and registration to that address?
2. Regarding MCL 211.7dd(c) which has a meandering and somewhat obtuse definition of principal residence; if the taxpayer in question owned and occupied 832 Eleanor on February 15, 1994 when the exemption was filed, how can it not be his principal residence in 2010 if he has never owned another property? The statute cited above clearly states that it will remain his principal residence until he establishes another principal residence. You cannot have a principal residence if you do not own it per the General Property Tax Act. He has only owned one property (832 Eleanor) in his life.

3. Please detail or show in any Michigan Income Tax instruction where it mentions that if a married couple files a joint return they can only claim one PRE. Please do the same with regard to any property tax return. Please show anywhere including a Michigan marriage license where a couple that comes into a marriage where each has their own property with a PRE would have any notice that they would lose one PRE. Also, for what reason is this proscription in the law?
4. What Treasury official has inspected 832 Eleanor to know that the taxpayer does not occupy the property? The taxpayer has stated that he does not spend the night there but he is there every day.

Recommendations

1. Start cleaning up this PRE mess by passing House Bill 4406 and stop assessing interest on tax deficiencies that are in appeal. Treasury is in no hurry to adjudicate these cases when the longer they wait the more money is harvested.
2. Remove the delinquency tag that is attached to people's taxes that are under appeal. Also, do not allow the terms preforeclosure and forfeiture to be used when a deficiency is under appeal.
3. Clarify the term "occupy." Treasury is defining it to mean reside or live, that is not necessarily what occupy means.
4. Since legislation cannot get to the most stark problem that Mr. O'Malley encountered I would counsel the Committee to step up its oversight of this entire PRE process. From beginning to end it is ripe for abuse.
 - a. Are the contracting companies reliable handling taxpayer's social security numbers? Does the state have absolute and rigid oversight of their use?
 - b. Does the Treasury really subscribe to the Taxpayers Bill of Rights that it circulates? My experience with the PRE Unit is a resounding no. There was no response to requests for meetings, information or counseling.
 - c. The process at the informal hearing level with Ms. Martell and the Tax Tribunal was, quite frankly, awful. It was kind of like traffic court but without the charm and the personal touch. You know what traffic court is like-you always lose. An additional reality is that there is no cost benefit to the taxpayer to appeal a PRE denial. \$5,000 is a good chunk out of Mr. O'Malley's pocket but a realistic legal bill for this appeal would be two or three times the cost of the deficiency. So, in the end the sad fact is you pay your money to get out as cheaply as you can and let justice be damned.

In Conclusion

I thank the Committee for this opportunity and its indulgence. I hope I have not gone on too long but I believe my message is important. My brother has lost his case and his money but if I can prevent other taxpayers from this same shameful experience I will have accomplished something meaningful. If you have any further questions I would be glad to answer them and know that I would be happy to be a resource for this Committee and its important work.

Respectfully submitted:

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